

# AG Opinion 02-001

January 30, 2002

Utah Attorney General's Opinion No. 02-001  
The Honorable L. Alma Mansell  
President, Utah Senate  
319 State Capitol  
Salt Lake City, Utah 84114

The Honorable Martin R. Stephens  
Speaker, Utah House of Representatives  
318 State Capitol  
Salt Lake City, Utah 84114

Re: Interpretation of the Voluntary Contributions Act

Dear President Mansell and Speaker Stephens:

You have asked the Attorney General to issue a formal opinion on whether the term "political activities" contained in the Voluntary Contributions Act includes "lobbying." For the reasons explained below, it is the opinion of the Attorney General that the term "political activities" as defined in Utah Code § 20A-11-1402(1)(e) (2001) (the relevant codification of the Voluntary Contributions Act) does not include "lobbying." Moreover, our Office intends to enforce and apply this provision so as not to include the concept of "lobbying" in "political activities" for the purposes of Utah Code § 20A-11-1402 (1)(e).

## **Factual Background**

The subject legislation in its original form was known as H.B. 179. The Bill was later amended and referred to as First Substitute H.B. 179. First Substitute H.B. 179 was passed and signed into law effective April 30, 2001. First Substitute H.B. 179 enacted and amended various statutory provisions, one of which is Utah Code § 20A-11-1402. L. 2001 ch. 285, § 2. Section 20A-11-1402(1)(e) defines the term "political activities." It states:

*"Political activities" means electoral activities, independent expenditures, or expenditures made to any candidate, political party, political action committee, political issues committee, voter registration campaign, or any other political or legislative cause, including ballot propositions.*

The foregoing definition of "political activities," which mirrors exactly the language of First Substitute H.B. 179, does not include the term "lobbying." This is noteworthy because the definition of "political activities" in H.B.179 did contain the term "lobbying:"

"Political activities" means lobbying, electoral activities, independent expenditures, or expenditures made to any candidate, political party, political action committee, political issues committee, voter registration campaign, or any other political or legislative cause, including ballot propositions.

Thus, First Substitute H.B. 179, which was ultimately enacted into law, was expressly amended to remove the term "lobbying" from the scope of the "political activities" as defined by the Act.

#### Controlling Legal Authorities

The Utah Supreme Court stated in *Johnson v. Utah State Retirement Board*, 770 P.2d 93, 95 (Utah 1988):

A fundamental principle of statutory construction is that unambiguous language in the statute itself may not be interpreted so as to contradict its plain meaning.

*Kuehner v. Irving Trust Co.*, 299 U.S. 445, 449, 57 S.Ct. 298, 300, 81 L.Ed. 340

(1937) (where statutory language is clear, its meaning cannot be affected by resort to the legislative history); *United States v. Richards*, 583 F.2d 491, 495

(10th Cir.1978) ("Legislative history as an aid in determining the intent of Congress is permissible only if the statute is ambiguous."); *Jensen v.*

*Intermountain Health Care, Inc.*, 679 P.2d 903, 906 (Utah 1984) (best indicator of

legislative intent is the statute's plain language); *State v. Archuleta*, 526 P.2d 911, 912 (Utah 1974) (in the absence of ambiguity, there is nothing to construe).

There is nothing ambiguous in the language of the 1983 amendment.

More recently, in *In Re Young*, 976 p.2d 581, (Utah 1999), the Court opined as follows:

*According to Ohms, the reason for the rule prohibiting extraneous or contemporaneous construction of facially plain and unambiguous constitutional provisions is that the rule "prevents judges from 'finding' an ambiguity in even the most plain language of a constitutional or statutory provision as an excuse to search the legislative history in an attempt to justify an interpretation they prefer." Ohms, 881 P.2d at 850 n. 14.*

Just two years ago, in *Worthen*, we stated:

Here, as in other cases, "when faced with a question of statutory [or constitutional] construction, we look first to the plain language of the statute [or constitution]." Under our rules of statutory construction, we need not look beyond the plain language of this provision unless we find some ambiguity in it.... If we find the provision ambiguous, however, we then seek guidance from the legislative history and relevant policy considerations .....

576 P.2d at 598.

## **Analysis**

The inquiry into the meaning of the term "political activities" in Section 20A-11-1402(1)(e) begins with the plain language of its definition. Notably, the term "lobbying" does not appear in the definition. The question then becomes whether the concept of "lobbying" falls within any of the other terms contained in the statutory definition of "political activities." Below is an analysis of each component of the definition.

### Electoral Activities

The plain everyday understanding of the term "lobbying" does not bring to mind the idea of "electoral activities." The notion of lobbying goes to the idea of communicating with lawmakers over pending legislation. In contrast, "electoral activities" are focused on matters related to elections and election campaigns.

### Independent Expenditures

The plain everyday understanding of the term "lobbying" may possibly include, but does not necessarily equate to, the idea of expenditures, or spending money. Whether there is a connection between "expenditures" and "lobbying" is perhaps ambiguous.

### Expenditures Made to Any Candidate or Political Party

The plain everyday understanding of the term "lobbying" may possibly include, but does not necessarily equate to, the idea of communicating with candidates and political parties, as much as it does communicating with lawmakers regardless of political affiliation. Moreover, as stated above, the notion of "lobbying" may possibly include, but does not necessarily equate to, the notion of expenditures. The connection with lobbying may be ambiguous.

### Expenditures Made to Any Political Party

The plain everyday understanding of the term "lobbying" relates not to partisan political activities, but rather to communications with lawmakers. However, it is possible that lobbying may include, but is not necessarily limited to, communications geared toward legislators belonging to a particular party. Moreover, as stated above, the notion of "lobbying" may possibly include, but does not necessarily equate to, the notion of expenditures. The connection to lobbying is ambiguous at most.

### Expenditures Made to Any Political Action Committee or Political Issues Committee

The plain everyday understanding of the term "lobbying" relates not to communications with PAC's and issues committees, but rather to communications with law makers. Moreover, as stated above, the notion of "lobbying" may possibly include, but does not necessarily equate to, the notion of expenditures.

### Expenditures Made to Any Voter Registration Campaign

The plain everyday understanding of the term "lobbying" does not bring to mind the idea of spending money for voter registration campaigns.

### Expenditures Made to Any Other Political or Legislative Cause

The plain every day understanding of the term "lobbying" does not equate to political causes. It is arguable, though not clear, that a "legislative cause" may possibly include an effort to pass proposed legislation and communications with lawmakers over proposed legislation. However, as stated above, the notion of lobbying may possibly include, though does not necessarily equate to, the notion of expenditures or spending money on legislative causes. The connection to lobbying is thus ambiguous.

Based on the foregoing analysis, we conclude that whether the particular concepts set forth in the statutory definition of "political activities" includes the concept of "lobbying" is ambiguous at best. Because of this ambiguous connection, it is appropriate under Utah's rules of statutory construction to review legislative history to resolve the ambiguity.

In this instance, the legislative history behind Utah Code § 20A-11-1402(1)(e) reveals a conscious intent on the part of the Legislature to exclude the concept of "lobbying" from the definition of "political activities." The original bill included "lobbying" in its definition of "political activities." The Legislature then consciously and expressly amended the bill to exclude the term "lobbying" from the definition of "political activities." Therefore, any ambiguity over whether the statutory definition of "political activities" includes "lobbying," is conclusively resolved by the legislative intent to exclude "lobbying"

### **Conclusion**

Although it may not be apparent from the plain language of the Voluntary Contributions Act that the term "political activities" in Utah Code Section

20A-11-1402(1)(e) does not encompass "lobbying," any ambiguity is resolved by the clear intent of the Utah Legislature to exclude "lobbying" from this definition. Accordingly, by applying accepted principles of statutory construction to the plain language of the statute, this Office concludes that "lobbying" is excluded from the Voluntary Contributions Act's definition of "political activities." This Office will apply this interpretation in its enforcement of the Voluntary Contributions Act.

Sincerely,

Mark L. Shurtleff  
Utah Attorney General  
MLS/bj